



## Final Regulation Agency Background Document

<b>Agency name</b>	DEPT OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 30-50- 226, 420 and 430
<b>Regulation title</b>	Amount, Duration and Scope of Services
<b>Action title</b>	Community Mental Health Prior Authorization
<b>Date this document prepared</b>	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

This regulatory action adds a requirement for authorization of Medicaid mental health services. This change is made to comply with the 2009 Acts of Assembly to ensure that services are provided to those who meet the service eligibility criteria.

There were no changes made to the regulation from the publication of the proposed stage to the final regulation.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

I hereby approve the foregoing Agency Background document with the attached regulations 12VAC 30-50-226, 420 and 430 and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act. I hereby certify that these regulations are full, true and correctly dated.

\_\_\_\_\_
Date

\_\_\_\_\_
Cynthia B. Jones, Acting Director
Dept. of Medical Assistance Services

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The Code of Virginia (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The Code of Virginia (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the Social Security Act [42 U.S.C. 1396a] provides governing authority for payments for services.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this action is to require prior authorization for certain already-covered community mental health services in order to ensure that such services are rendered based on medical necessity and Medicaid service criteria. This regulatory action will help protect the health, safety and welfare of Medicaid recipients by minimizing inappropriate utilization of unnecessary services.

Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

This action implements new prior authorization for Community Mental Health services for children and adults. DMAS already has regulations that address prior authorization for other services. Therefore those aspects of the Item 306 OO of the Chapter 781 of the 2009 Acts of Assembly are already in operation and need not be addressed in this package. The particular change implemented is the addition of a prior authorization requirement to case management services for seriously mentally ill adults and emotionally disturbed children (12 VAC 30-50-420), and for youth at risk of serious emotional disturbance (12 VAC 30-50-430). In addition, DMAS is adding this same requirement to the following services detailed in 12 VAC 30-50-226: day treatment/partial hospitalization services, psychosocial rehabilitation, intensive community treatment, and mental health support services.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*  
1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*  
2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*  
3) *other pertinent matters of interest to the regulated community, government officials, and the public.*  
*If there are no disadvantages to the public or the Commonwealth, please indicate.*

There are no disadvantages to citizens in implementing these provisions. The advantage to the Commonwealth will be improved control of utilization of these rapidly escalating services. A possible disadvantage to the providers (businesses) that render these services is that now they will have to obtain prior authorization from DMAS' contractor before these services can be rendered. Some providers may see this as a barrier to service delivery.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.*

No changes have been made since the publication of the proposed stage.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

DMAS' proposed regulations were published in the 12/21/09, *Virginia Register Volume 26*, Issue 8 for their public comment period from 12/21/09, through 2/19/10. No comments were received.

**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change, rationale, and consequences</b>
12VAC30-50-226		Existing mental health services day treatment/partial hospitalization, psychosocial rehab, intensive community treatment, mental health supports do not currently require prior authorization in order for Medicaid to pay providers' claims	Providers will now be required to seek prior authorization before their claims for these services will be paid.
12VAC30-50-420		Case management for seriously mentally ill adults and emotionally disturbed children.	Providers will now be required to seek prior authorization before their claims for these services will be paid.
12VAC30-50-430		Case management for youth at risk of serious emotional disturbance	Providers will now be required to seek prior authorization before their claims for these services will be paid.

**Regulatory flexibility analysis**

*Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

There are no reporting requirements applicable to providers for these suggested changes. The prior authorization process with DMAS' designated contractor has been in place for other mental

health services and many of the providers of the services affected by the new regulation are familiar with the process. Adding prior authorization to ensure the appropriate utilization of the identified services was determined to have the least impact on providers and clients. Providers will receive a notice of the action taken on the request within 3-5 business days. DMAS does not apply performance standards to providers. In order for providers to receive the required authorization to render these services, they must submit certain specified information that is consistent with the existing regulations governing these services.

### Family impact

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. It does not strengthen or erode the marital commitment, but may decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.